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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/692,869

10/24/2003

Arvo Poldmaa

9764-20US (12866/GW)

1948

570

7590

05/28/2004

EXAMINER

AKIN GUMP STRAUSS HAUER & FELD L.L.P.  
ONE COMMERCE SQUARE  
2005 MARKET STREET, SUITE 2200  
PHILADELPHIA, PA 19103-7013

LEV, BRUCE ALLEN

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 05/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/692,869

Applicant(s)

POLDMAA, ARVO

Examiner

Bruce A. Lev

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

BRUCE A. LEV  
PRIMARY EXAMINER

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The form and legal phraseology often used in patent claims, such as "**means**", as in line 1, and "said," should be avoided.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "**is disclosed**", as in line 3.

### *Claim Objections*

Claim 10 is objected to because a claim cannot rely on the specification and drawings alone. The claim must set forth (structural) limitations defining the invention being claimed. Therefore, **claim 10 cannot be treated on the merits**.

### *Claim Rejections - 35 USC § 112*

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns claims 1-3, there is an inconsistency between the language in the preamble and certain portions in the body of the claims, thereby making the scope of the claims unclear. For example, the preamble clearly indicates that the subcombination of a "bracket" is being claimed with the functional recitation of the "bracket...for receiving a rung of a ladder...placed against the gutter of a building".

However, the body of the claim positively recites the "ladder", "gutter", and the "building", e.g., "a second region which *spans* the gutter" (claim 1); "being covered by the roofing material" (claim 2); and "the second region spans the gutter" (claim 3), which indicates the claims as being drawn to a combination of the "ladder", "gutter", and the "building". Therefore, the applicant is required to clarify what the claims are intended to be drawn to, i.e., either the "bracket" alone or in combination with the "ladder", "gutter", and the "building", and to present the claims with the language which is consistent with the invention. The applicant should note that "*adapted to be*" language may be appropriate if claiming the "bracket" alone (i.e., "adapted to be secured to").

As concerns claim 2, the phrase "suitable means" is vague and indefinite since a means must be defines, i.e., "means for attaching" or "attaching means". Further, the phrases "such as", "or the like", and "or" are improper and render the claim as vague and indefinite.

As concerns claim 5, the phrases "such as", "especially", and "or" are improper and render the claim as vague and indefinite.

As concerns claim 6, the phrase "any suitable process" does not define a process, is improper, and thereby renders the claim as vague and indefinite.

As concerns claim 9, the phrase "by such means" is vague and indefinite since a means must be defines, i.e., "means for securing" or "securing means". Further the phrases "such as", "or the like", and "or" are improper and render the claim as vague and indefinite.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by de ***Wilde*** ***4,940,198***.

De Wilde sets forth a bracket comprising a first region (1) *capable* of attaching to a building; a second region (2) *capable* of spanning a gutter, and a third region (viewed as the curved corrugation adjacent to the second section) *capable* of receiving the rung of a ladder; the first region being in the form of a planar sheet metal that is bendable; and including securing points (inclusive of member 5). The applicant should note that *product-by-process* limitations within apparatus claims (such as “the bracket being moulded”) are NOT given patentable weight.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by de ***the*** ***UK Patent 2,118,236 of Lee et al.***

Lee et al set forth a bracket comprising a first region (18) *capable* of attaching to a building; a second region (11) *capable* of spanning a gutter, and a third region (inclusive of members 24 and 25) *capable* of receiving the rung of a ladder; the first region being in the form of a planar sheet that is “bendable”; and securing points. The

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applicant should note that *product-by-process* limitations within apparatus claims (such as "the bracket being moulded") are NOT given patentable weight.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

5/24/2004



**Bruce A. Lev**  
**Primary Examiner**  
**Group 3600**